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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RON DOUGLAS PATTERSON,

Defendant and Appellant.

E060758

(Super.Ct.No. RIF1201642)

OPINION

APPEAL from the Superior Court of Riverside County. Helios (Joe) Hernandez,
Judge. Affirmed.

AJ Kutchins for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General,
William M. Wood, Heather Crawford and Meagan J. Beale, Deputy Attorneys General,
for Plaintiff and Respondent.

On October 22, 2012, an amended felony complaint charged defendant and appellant Ron Douglas Patterson with reckless evasion of a police officer under Vehicle Code section 2800.2 (count 1); transportation or sale of methamphetamine under Health and Safety Code section 11379, subdivision (a) (counts 2, 7); transportation or sale of cocaine under Health and Safety Code section 11352, subdivision (a) (count 3); possession of cocaine under Health and Safety Code section 11350, subdivision (a) (count 4); possession of morphine under Health and Safety Code section 11350, subdivision (a) (count 5); possession of MDMA under Health and Safety Code section 11377, subdivision (a) (count 6); and possession of PCP under Health and Safety code section 11377 (count 8).

On March 13, 2013, defendant entered into a plea agreement wherein he agreed to plead no contest to counts 1 and 6. In exchange, defendant would be granted probation with the condition that he serve 180 days in custody on weekends or work release. The remaining counts were dismissed. The trial court sentenced defendant in accordance with the plea agreement.

On January 8, 2014, the trial court denied defendant's motion to withdraw his plea. Defendant filed a notice of appeal and the trial court granted a certificate of probable cause. On appeal, defendant contends that the trial court abused its discretion when it denied his motion to withdraw the plea. Moreover, on July 1, 2014, defendant filed a petition for writ of habeas corpus, case No. E061436. On July 8, 2014, we ordered that the petition for writ of habeas corpus would be considered with this appeal for the sole purpose of determining whether an order to show cause should issue. For the

reasons set forth below, we shall affirm the judgment and summarily deny the petition for writ of habeas corpus.

FACTUAL AND PROCEDURAL HISTORY

Defendant agreed that he committed the crimes of reckless evasion of a police officer and possession of MDMA. On July 19, 2011, defendant did not stop his car when the police were pursuing him with the siren and lights activated on the police vehicle. Defendant caused a collision with the car of an 80-year-old woman. Defendant possessed a controlled substance.

DISCUSSION

A. THE WRIT OF HABEAS CORPUS

In his petition for a writ of habeas corpus, defendant asserts that his trial counsel provided him with ineffective assistance of counsel (IAC). Defendant seeks reversal of the judgment and the setting aside of his guilty plea. The People have filed an informal response to defendant's writ petition, and defendant has filed a reply.

Defendant bears the burden of proof of pleading a sufficient basis for writ relief: "Because a petition for a writ of habeas corpus seeks to collaterally attack a presumptively final criminal judgment, the petitioner bears a heavy burden initially to *plead* sufficient grounds for relief, and then later to *prove* them. 'For purposes of collateral attack, all presumptions favor the truth, accuracy, and fairness of the conviction and sentence; *defendant* thus must undertake the burden of overturning them. Society's interest in the finality of criminal proceedings so demands, and due process is not thereby offended.' [Citation.]" (*People v. Duvall* (1995) 9 Cal.4th 464, 474.)

Defendant asserts in his writ petition that he is entitled to an order vacating the plea agreement and his guilty plea based on ineffective representation provided by his trial counsel prior to defendant entering his guilty plea. Defendant alleges he was prejudiced by counsel's IAC in that defendant would not have pled guilty had counsel provided effective representation. Defendant complains that his defense counsel was ineffective because she failed to advise him that his conviction would absolutely result in his permanent deportation and loss of his nursing license, and she did not attempt to negotiate a plea to an alternative, immigration-neutral offense.

In order to prevail on a claim of IAC, the defendant must show both that counsel's representation fell below an objective standard of reasonableness under prevailing professional norms, and that counsel's deficient performance was prejudicial, i.e., that a reasonable probability exists that, but for counsel's failings, the result would have been more favorable to the defendant. (*Strickland v. Washington* (1984) 466 U.S. 668, 688, 694; see also *In re Resendiz* (2001) 25 Cal.4th 230, 237, 239 (*Resendiz*).) A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. (*People v. Bolin* (1998) 18 Cal.4th 297, 333.) If a claim of IAC can be determined on the ground of lack of prejudice, a court need not decide whether counsel's performance was deficient. (*Strickland*, at p. 697; *In re Cox* (2003) 30 Cal.4th 974, 1019-1020.)

In this case, defendant has failed to demonstrate either incompetence or prejudice. Here, in his felony plea form, defendant initialed next to the following: "If I am not a citizen of the United States, I understand that this conviction may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization

pursuant to the laws of the United States.” At the hearing wherein defendant pled no contest, defendant stated that he went over the plea forms with counsel, understood everything, and did not have any questions. In his declaration in support of his motion to withdraw his guilty plea, defendant admits that “[t]he plea form, in the fine print, said there might be immigration consequences.” Defendant, however, states that he did not know that the conviction would make his deportation mandatory. Defendant even admits that he tried to get in touch with his immigration lawyer but decided to take the offer without immigration advice “since [he] was informed that the offer would be withdrawn if not accepted at that time.” Defendant made a calculated decision to take the plea – knowing there could be immigration consequences – without first consulting with his immigration counsel. Based on the above, we cannot say that defense counsel acted incompetently. Instead, counsel ensured that defendant knew about potential immigration consequences.

Defendant argues that the advisement he admittedly received, couched in the statutory language, was inadequate. He contends that his attorney was obliged to do more than advise him of the general consequences of the plea, in reliance on cases such as *Padilla v. Kentucky* (2010) 559 U.S. 356 (*Padilla*); *Resendiz, supra*, 25 Cal.4th 230. These cases do not support his IAC claim.

In *Padilla*, the United States Supreme Court simply held that “counsel must inform her client whether his plea carries a risk of deportation,” and found that the defendant’s counsel was deficient for failing to do so. (*Padilla, supra*, 559 U.S. at pp. 373-374.) However, counsel in that case not only failed to advise the defendant of

immigration consequences prior to entering his plea, but also told him that he “did not have to worry” about his immigration status, since he had been in the United States for so long. (*Id.* at p. 359.) The United States Supreme Court found defense counsel’s performance deficient. Although the consequences of the defendant’s plea could have easily been determined from reading the applicable statute, counsel failed to advise the defendant in accordance with the statute. Furthermore, his counsel’s advice was incorrect. (*Id.* at pp. 368-369.) The court stated: “It is our responsibility under the Constitution to ensure that no criminal defendant—whether a citizen or not—is left to the ‘mercies of incompetent counsel.’ [Citation.] To satisfy this responsibility, we now hold that counsel must inform her client whether his plea carries a *risk* of deportation.” (*Id.* at p. 374, italics added.)

Similarly, defense counsel in *Resendiz* affirmatively misadvised the defendant by telling him that if he pled guilty, he would have “‘no problems with immigration’ except that he would not be able to become a United States citizen.” (*Resendiz, supra*, 25 Cal.4th at pp. 236, 251.)

Here, defendant does not and cannot claim that his attorney gave him incorrect advice. The evidence clearly shows that defendant was aware of potential immigration consequences.

Defendant relies on *People v. Soriano* (1987) 194 Cal.App.3d 1470, for the proposition that his attorney was obliged to do more than tell him the immigration consequences of the plea in general terms. (See *Id.* at pp. 1480-1482 [a “formulaic warning” or a “pro forma caution” from the attorney was not “founded on adequate

investigation of federal immigration law,” and was inadequate advice concerning the immigration consequences of the plea].) On the other hand, the California Supreme Court in *Resendiz* stated that the failure of the trial attorney to investigate the likely immigration consequences did not constitute deficient performance: “We are not persuaded that the Sixth Amendment imposes a blanket obligation on defense counsel, when advising pleading defendants, to investigate immigration consequences or research immigration law.” (*Resendiz, supra*, 25 Cal.4th at pp. 249-250.) We are likewise unpersuaded that an attorney has a duty to do more than advise the pleading defendant of the immigration consequences of the plea; no particular form of warning is required, as long as the defendant is informed that serious immigration consequences could result from the conviction. (Cf. *People v. Castro-Vasquez* (2007) 148 Cal.App.4th 1240, 1244 [statutory admonition by the court under Pen. Code, § 1016.5 “need not be in the statutory language, and substantial compliance is all that is required, ‘as long as the defendant is specifically advised of all three separate immigration consequences of his plea’”].)

At oral argument, defendant’s appellate counsel argued that trial counsel rendered IAC because she failed to inform defendant that pleading guilty would lead to deportation, citing *Padilla, supra*, 559 U.S. 356. As we have discussed above, we find counsel’s argument to be without merit. In *Padilla*, defense counsel affirmatively told the defendant that he did not have to worry about his immigration consequences. Here, defendant was informed about immigration consequences. However, defendant’s appellate counsel argued that notwithstanding defense counsel’s advisement, she still

rendered IAC because she failed to inform defendant that he *would* be deported; Arguing *Padilla* is not limited to instances of affirmative misadvice.

In *Padilla*, 559 U.S. 356, the Supreme Court was worried that limiting its holding “to affirmative misadvice would invite two absurd results.” (*Id.* at p. 370.) “First, it would give counsel an incentive to remain silent on matters of great importance . . . Second, it would deny a class of clients least able to represent themselves the most rudimentary advice on deportation even when it is readily available.” (*Id.* at pp. 370-371.) In this case, defense counsel did not remain silent; she informed defendant of potential immigration consequences if he pled guilty. Not only did counsel inform defendant that he may risk deportation, defendant had hired an immigration attorney to advise him separately on this issue. Defendant, however, made a calculated decision to enter the plea prior to consulting with his immigration attorney because he did not want to risk losing the plea deal. Under these circumstance, where defendant made his choice to go forward with his plea deal fully aware of potential immigration consequences and with the ability to figure out the *exact* immigration ramifications, he cannot now claim IAC in an effort to vacate his plea.

Defendant also relies on *People v. Bautista* (2004) 115 Cal.App.4th 229. In *Bautista*, the defendant was arrested after investigators found 100 pounds of marijuana in a storage locker he was renting with his brother. (*Id.* at pp. 232-234.) The *Bautista* court found ineffective assistance of counsel because the defendant’s attorney did not attempt to plead up to a lesser offense that was not an aggravated felony under federal immigration law. (*Id.* at pp. 239-242.) Because the defendant was a co-renter of the

storage unit, had no past convictions, did not personally possess contraband or weapons, and no weapons were used in the crime, the court in *Bautista* described the defendant's offense as "relatively innocuous." (*Id.* at p. 242.)

We do not find *Bautista* persuasive because its entire analysis is predicated on the premise that there was a reasonable probability the prosecutor and trial court would have been amenable to allowing the defendant to plead up to a nonaggravated felony. We do not find this premise convincing in this case wherein there is absolutely no evidence that the prosecutor and trial court would have been amenable to allowing defendant to plead guilty to a lesser charge.

Just as defendant is unable to establish that his attorneys acted incompetently, he is also unable to show prejudice. Despite defendant's averment in his declaration—that he would not have pleaded guilty had he known that he could be deported—that claim is not sufficient in itself to establish prejudice. "[A] defendant's self-serving statement [regarding whether] with competent advice he or she *would* [or would not] have accepted a proffered plea bargain, is insufficient in and of itself to sustain the defendant's burden of proof as to prejudice, and must be corroborated independently by objective evidence. A contrary holding would lead to an unchecked flow of easily fabricated claims." (*In re Alvernaz* (1992) 2 Cal.4th 924, 938.) The factors to consider are, "whether counsel actually and accurately communicated the offer to the defendant; the advice, if any, given by counsel; the disparity between the terms of the proposed plea bargain and the probable consequences of proceeding to trial, as viewed at the time of the offer; and whether the defendant indicated he or she was amenable to negotiating a plea bargain." (*Ibid.*)

Defendant has not claimed that trial counsel inaccurately conveyed the plea offer to him. He was offered an advantageous bargain, resulting in dismissal of six charges and a limitation of custody to weekend or work release incarceration. Although defendant asserts he would have insisted on going to trial had he known he could be deported, at trial his exposure was 10 years imprisonment had he been convicted, and the conviction still would have rendered him deportable.

Defendant could not establish either prong of his IAC claim; the claim fails.¹

B. THE APPEAL: MOTION TO VACATE PLEA

The People contend that the trial court erred in granting defendant's motion to withdraw his guilty plea and reinstating the criminal proceedings.

“Penal Code section 1018 provides that a trial court ‘must’ allow the withdrawal of a guilty plea only in the case of a defendant who entered a guilty plea without counsel, and in other cases the court ‘may . . . for good cause shown, permit a plea of guilty to be withdrawn’” (*People v. Watts* (1977) 67 Cal.App.3d 173, 184; see *People v. Cruz* (1974) 12 Cal.3d 562, 565-566.) Good cause is shown by mistake, ignorance, inadvertence, or “any other factor overreaching defendant’s free and clear judgment,” and the defendant has the burden of showing good cause by clear and convincing evidence. (*People v. Superior Court (Giron)* (1974) 11 Cal.3d 793, 797; *Cruz*, at p. 566.) The trial court then considers all factors necessary to obtain a just result, including the rights of the defendant. (*Giron*, at p. 798; *People v. Waters* (1975) 52 Cal App.3d 323,

¹ We dispose of the writ by way of a separate order.

331.) The trial court must examine whether the defendant understood the nature of the charges, the elements of the offense, the pleas and the defenses at the time of his plea. (*People v. Hunt* (1985) 174 Cal.App.3d 95, 103.)

“A decision to deny a motion to withdraw a guilty plea “rests in the sound discretion of the trial court” and is final unless the defendant can show a clear abuse of that discretion.” (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254.) The trial court has broad discretion when considering a motion to withdraw a guilty plea, and the facts found by the trial court must be adopted by the reviewing court if they are supported by substantial evidence. (*People v. Suon* (1999) 76 Cal.App.4th 1, 4; *People v. Mickens* (1995) 38 Cal.App.4th 1557, 1561.) Therefore, the trial court’s denial must be “arbitrary or capricious or ““exceed[] the bounds of reason[,]”” to be disturbed on appeal.² (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

In this case, defendant claims that he is entitled to withdraw his no contest plea because he was unaware that “his resulting conviction would have the automatic and unavoidable effect” of deportation. We disagree.

Here, as provided above, defendant initialed and signed the plea form wherein under “CONSEQUENCES OF PLEA,” it stated: “If I am not a citizen of the United States, I understand that this conviction may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the

² The reviewing court must also take into account that “guilty pleas entered as a result of a bargain should not be lightly set aside and . . . the finality of such proceedings should be encouraged.” (*People v. Urfer* (1979) 94 Cal.App.3d 887, 893, fn. 6, citing *Blackledge v. Allison* (1977) 431 U.S. 63.)

laws of the United States.” Defendant initialed next to a line immediately next to this statement. Moreover, defendant signed immediately below the statement, “I have read and understand this entire document. I waive and give up all of the rights that I have initialed. I accept this Plea Agreement.” Thereafter, defense counsel dated and signed immediately below this statement: “I am the attorney for the defendant. I am satisfied that (1) the defendant understands his/her constitutional rights and understands that a guilty plea would be a waiver of these rights; (2) the defendant has had an adequate opportunity to discuss his/her case with me, including any defenses he/she may have to the charges; and (3) the defendant understands the consequences of his/her guilty plea. I join in the decision of the defendant to enter a guilty plea.”

Moreover, in his declaration in support of his motion to withdraw his plea, defendant admits that he knew about the immigration consequences of his guilty plea. Defendant tried to contact his immigration attorney but was not successful. However, although defendant was not clear what those consequences may be, *he decided to take the plea offer.*

At the hearing on the motion to withdraw, the court pointed out, “This is a case where [defendant] hired a private attorney, and there was substantial amount of negotiation between the defense attorney and DA. The defense attorney actually wrote a letter, very laudatory of [defendant] about his life as a Canadian and how he has a productive second life in the United States. So I don’t think there’s any misunderstanding about the facts.” The court went on to note that defendant signed the plea agreement indicating that he knew about potential deportation consequences. The

court concluded by stating: “I think 1016.5 is here for a purpose, and it was given. [Defendant] said he understood everything I asked him. It says, ‘Do you understand everything?’ ‘Do you have any questions?’ He said ‘yes’ he understood. ‘No,’ he didn’t have any questions. There’s a point where you have to treat an adult as an adult and just accept their answers for what they are.” Thereafter, the court denied defendant’s motion.

In sum, based on the plea form and defendant’s own admissions, it is unequivocal that defendant received the required admonition under Penal Code section 1016.5 and clearly knew about the immigration consequences. The trial court, therefore, did not abuse its discretion in denying defendant’s motion to withdraw his guilty plea.

Defendant, however, argues that his motion to withdraw should have been granted under *Padilla v. Kentucky*, *supra*, 559 U.S. 356. However, as discussed *ante*, in *Padilla*, defense counsel gave incorrect advice to her noncitizen client by advising him that a guilty plea would have no consequences for the defendant’s immigration status. (*Id.* at p. 359.) There was no misadvisement in this case. Instead, defendant was fully aware of the immigration consequences.

Moreover, defendant’s reliance on *United States v. Bonilla* (9th. Cir. 2011) 637 F.3d 980 is misleading. Defendant repeatedly quotes the following from *Bonilla*: “A criminal defendant who faces almost certain deportation is entitled to know more than that it is *possible* that a guilty plea could lead to removal; he is entitled to know that it is a virtual certainty.” (*Id.* at p. 984.) *Bonilla*, however, is distinguishable.

In that case, the defendant’s wife, on behalf of the defendant, repeatedly asked the investigator at the public defender’s office and the public defender if the defendant could

be deported if he pled guilty. (*United States v. Bonilla, supra*, 637 F.3d. at pp. 981-982.) Although the public defender told the defendant's wife that she would look into the matter, the public defender never did "and failed to provide any information about immigration consequences to [the defendant] or [the defendant's] wife prior to the plea hearing." (*Id.* at p. 982.) Even after the defendant entered his guilty plea, the wife again asked the lawyer about the immigration consequences of his plea. The lawyer told the wife an answer would be provided after talking with an immigration specialist. "Several days later, she told [the defendant's] wife over the phone that as a result of his guilty plea, [the defendant] would be deported after serving his sentence." (*Ibid.*) Therefore, the defendant filed his motion to withdraw, which the district court denied. The Ninth Circuit reversed the district court. In reaching this decision, the Ninth Circuit noted that the defendant "received *no* advice about immigration consequences before entering his plea, only learning afterward that pleading guilty would almost certainly result in deportation." (*Id.* at p. 984.) The court also stated that although the defendant "may have known prior to his plea about the *possibility* that there might be a reason not to plead to the indictment, because of [the defendant's] lawyer's failure to answer his wife's question he did not know whether that possibility was likely to have any real consequences." (*Id.* at p. 985.) Moreover, the defendant's lawyer "later admitted that at the time of the plea hearing she had mistakenly thought that [the defendant] was a citizen." (*Id.* at p. 986.) Therefore, the court concluded: "Had [the defendant's] lawyer provided him with the advice that his wife requested about possible immigration consequences of his plea, such advice 'could have at least plausibly motivated a

reasonable person in [the defendant's] position not to have pled guilty. . . . ' [Citation.]”
(*Ibid.*)

The facts in this case are different. Here, unlike the defendant and his wife in *Bonilla*—who repeatedly requested information regarding immigration consequences and were never told about them—defendant was informed and acknowledges that he was informed regarding the possible immigration consequences. *Bonilla*, therefore, is not applicable.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.